

DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

D.T.E. 04-116

I. INTRODUCTION

KeySpan Energy Delivery New England (“KeySpan” or the “Company”)¹ is pleased to file the following reply comments in response to the comments filed on March 1, 2005 in the above-referenced proceeding. On that date, KeySpan, along with Bay State Gas Company (“Bay State”); The Berkshire Gas Company (“Berkshire”); Boston Edison Company, Cambridge Electric Light Company, Commonwealth Electric Company d/b/a NSTAR Electric and NSTAR Gas Company (collectively “NSTAR”); Fitchburg Gas & Electric Company (“Fitchburg”); Massachusetts Electric Company and Nantucket Electric Company (“National Grid”); New England Gas Company (“New England Gas”); Western Massachusetts Electric Company (“WMECo”); the Office of the Attorney General (the “Attorney General”); Associated Industries of Massachusetts (“AIM”); Constellation New Energy (“Constellation”); the International Brotherhood of Electrical Workers, Local 103 (“IBEW”) and the Utility Workers Union of America, including Locals 273, 369 and 654 (the “UWUA”) filed comments in this proceeding. As

requested by the Department of Telecommunications and Energy (the “Department”) in its Vote to Open Investigation in this docket, the comments addressed issues regarding possible changes to the Service Quality (“SQ”) Guidelines (the “Guidelines”) established in Service Quality Standards for Electric Distribution Companies and Local Gas Distribution Companies, D.T.E. 99-84 (2001).

The initial comments generally focused on responding to the specific questions posed by the Department.² In addition, KeySpan, the Attorney General, Constellation, the IBEW and the UWUA commented on issues separate from the specific issues raised by the Department.³

The majority of the initial commenters supported the continuation of the Department’s Guidelines in their current form, with only modest changes recommended. The Attorney General, Constellation, the IBEW, the UWUA, and, to a lesser extent, AIM, recommended more comprehensive changes to the Guidelines.

II. REPLY TO RESPONSES TO DEPARTMENT QUESTIONS ON SQ

A. Role of Offsets in Future Guidelines

1. Summary of Comments

The Department sought comment in its Vote to Open Investigation on (1) whether the Guidelines’ offset provision offers an incentive for an LDC to improve SQ, and (2) if the use of penalty offsets should be continued in the future Guidelines.⁴ With regard to

¹ The Massachusetts LDCs that operate as KeySpan Energy Delivery New England are: Boston Gas Company, Colonial Gas Company and Essex Gas Company.

² Vote to Open Investigation at 2-4.

³ . See: KeySpan comments at 32-35, Attorney General Comments, Attachment 1; Constellation Comments at 2-9; UWUA Comments at 22-27 and IBEW comments at 1-14).

⁴ Vote to Open Investigation at 2.

the first issue, AIM and the utility companies agreed that the offset component provides an incentive to improve SQ.⁵ Constellation also acknowledged that offsets create an incentive to improve performance, but only “up to the level where penalties for poor performance on other measures are offset.”⁶

Moreover, a majority of the commenters favored the continued availability of offsets in future Guidelines. The utility companies favored the continued availability of offsets to address concerns regarding the mathematical underpinnings of the standard-deviation calculation used to establish the performance deadbands, particularly in relation to measures where only limited historical data is available to calculate such deadbands.⁷ Berkshire Gas specifically supported the continued availability of offsets to counter-balance an issue that may arise as a result of the manner in which benchmarks that are initially based on fewer than ten years of available data are calculated in the Guidelines. That is, where there are fewer than ten years of available data, the benchmark is updated each year until ten years of data has been accumulated. Berkshire noted that for companies that are subject to performance-based rate plans, this policy may result in a company being penalized for failing to meet a benchmark that has been increasing over several years, even though the performance that led to the penalty exceeds the level of service provided to customers at the outset of the plan.⁸

⁵ AIM Comments at 1; Bay State Comments at 4; Berkshire Comments at 6; Fitchburg Comments at 3; KeySpan Comments at 7-9; National Grid Comments at 3-4; New England Gas Comments at 9-11; NSTAR Comments at 11-13; WMECO Comments at 2-3.

⁶ Constellation Comments at 9.

⁷ (Bay State Comments at 3; Berkshire Comments at 6-7; Fitchburg Comments at 3; KeySpan Comments at 4-7; New England Gas Comments at 3-8; NSTAR Comments at 6-11; WMECO Comments at 3-4; see also National Grid Comments at 3.

⁸ Berkshire Gas Comments at 8.

AIM and the Attorney General favored the continued availability of offsets on a more limited basis than is currently allowed. AIM recommended that offsets should continue to be available, but should be limited “only to closely related performance measures.” AIM also recommended that the Department change its Guidelines to not allow a gas company’s Odor Call Response time to be eligible for offsets.⁹ The Attorney General recommended further limiting the availability of offsets to “exceptional or significantly improved performance compared to state, regional or national standards or averages for closely related performance measures.”¹⁰

The remainder of the commenters that offered an opinion on the topic of offsets opposed their continued availability. Constellation recommended that the Department replace the availability of offsets with the availability of incentives “for exemplary performance.”¹¹ The UWUA opposed the continued availability of offsets, alleging that offsets “undermine the purpose of service quality standards” by allowing a company to “choose not to address sub-standard performance in one area because it knows it can easily exceed the benchmark in another area” and obtain offsets to avoid a penalty.¹²

2. The Department Should Continue Allowing Offsets for Superior Service Quality Performance.

The Department should reject arguments that recommend either limiting or eliminating the availability of offsets. The majority of the commenters concluded that offsets both: (1) protect against the imposition of inappropriate penalties, where such penalties are the result of statistical, but not actual, SQ degradation as a result of the

⁹ AIM Comments at 1.

¹⁰ Attorney General Comments at 3.

¹¹ Constellation Comments at 9.

¹² UWUA Comments at 6-7.

mathematical formula used to establish the performance benchmarks, and (2) provide an incentive to improve SQ. Therefore, the availability of offsets as part of the Guidelines is appropriate.

Both AIM and the Attorney General recommended that the Department limit the availability of offsets in some form. However, these recommendations ignore the Department's stated policy for allowing offsets as a safeguard against inappropriate penalties.¹³ In implementing this policy, the Department acknowledged the need to allow for normal annual variability in performance data for each SQ category, and established a standard-deviation based deadband to allow for normal performance variability. Neither the Attorney General nor AIM has articulated a rational basis for assuming that accounting for normal year-to-year SQ performance variability in some categories is less important than in other categories. Accordingly, the Department should not restrict offsets from being available in particular SQ categories.

Moreover, the Department's SQ Guidelines currently address the Attorney General's specific recommendation that offsets should be limited to those categories where "exceptional performance" has been achieved.¹⁴ Under the Guidelines, offsets can be earned only once a company's performance has exceeded one standard deviation from its historic benchmark, with maximum offsets available only if a company's performance has exceeded two standard deviations from its benchmark.¹⁵ These thresholds represent "exceptional" performance, given the difficulty for companies to improve upon historic levels of performance, particularly in categories where several years of data exist for establishing a benchmark.

¹³ D.T.E. 99-84-B at 2; D.T.E. 99-84, at 28.

¹⁴ see Attorney General Comments at 3.

Finally, the UWUA's justification for altogether eliminating the availability of offsets (i.e., that offsets allow companies to choose not to address substandard performance) ignores the reality that, even if the earning of offsets allows a company to pay less in penalties, companies do not take lightly SQ performance in a given year that places them at risk for penalties. If a company's SQ performance in a given category places it at risk for penalties, the company's annual service quality report must reflect that fact and, thus, provides notice to the Department and the company's customers of possible SQ degradation. Accordingly, companies that may wish to "choose not to address substandard performance" place themselves at risk for adverse public scrutiny, regardless of whether offsets are available. Therefore, the Department should reject the UWUA's recommendation to eliminate the availability of offsets. Moreover, given the Department's stated reasons for allowing offsets, (i.e., to safeguard against the imposition of inappropriate penalties), if the Department does determine that offsets should be eliminated, it should then allow companies the opportunity to earn incentives. Incentives serve a similar purpose as offsets, protecting against the imposition of unfair penalties and providing a stimulus to companies to improve SQ performance. A more detailed discussion of incentives is contained in section II E below.

B. Increasing the Benchmark for Responding to Odor Calls

1. Summary of Comments

The Department sought comments on whether: (1) its Odor Call Response Time benchmark should be strengthened in the future Guidelines; and (2) multiple calls

¹⁵ D.T.E. 99-84, at Appx. 1, 9-10.

regarding a single gas leak should be considered as a single odor call response.¹⁶ The utility companies that commented on this question each recommended maintaining the existing 95 percent benchmark for responding to odor calls because: (1) each of the LDCs' historical performance data is based on this standard; (2) the standard is generally accepted throughout the gas industry; (3) the standard has ensured the safe and reliable delivery of gas to customers in the Commonwealth since its adoption by the Department in D.T.E. 99-84; and (4) the fact that a particular service-quality goal is "obtainable" is not a basis for setting a higher performance benchmark, unless the main objective of the higher benchmark is to create a greater potential for the utility to be penalized.¹⁷

The Attorney General and the UWUA both supported increasing the benchmark above the current 95 percent threshold (subject to input by the gas companies), although only the UWUA offered a specific benchmark for consideration.¹⁸ The Attorney General qualified his recommendation by noting that, "there is a limit on how far the benchmarks can be strengthened because, at some point, there will be diminishing returns from additional investment in SQ."¹⁹

2. The Department Should Not Increase the Odor Call Response Time Benchmark.

The Department should reject the recommendations of the Attorney General and the UWUA to increase the Odor Call Response benchmark. The Attorney General bases his recommendation on the argument that, "without this enhancement, the LDCs may actually be unacceptably slow in responding to odor calls, yet avoid penalties by counting

¹⁶ Vote to Open Investigation at 2.

¹⁷ see Bay State Comments at 5-6; Berkshire Comments at 8-9; Fitchburg Comments at 4-5; KeySpan Comments at 11; New England Gas Comments at 13; NSTAR Comments at 16.

¹⁸ Attorney General Comments at 3; UWUA Comments at 7.

¹⁹ Attorney General Comments at 3.

multiple calls as a single gas leak.”²⁰ As discussed below, there is no basis for the Attorney General’s contention that multiple odor calls from a single leak source can be used to manipulate performance results in a manner that would mask degradation in service. Thus, the Attorney General’s recommendation to increase the odor call benchmark should be rejected. Contrary to the Attorney General, the UWUA noted the high odor call response performance of NSTAR Gas, Bay State Gas and Berkshire Gas during 2003 and therefore recommended that the Department should increase the benchmark because it is “easy to achieve.”²¹ Other than pointing to one year’s performance for a sampling of the State’s gas utilities, which might be explained by any number of factors, including weather and the level of construction activity in the utility’s service territory, UWUA provides no factual basis for its contention that the benchmark is “easy to achieve.” Nor does UWUA or any other commenter provide evidence to suggest that a stricter standard would result in a higher degree of public safety. Thus, the recommendation of the UWUA is a self-serving attempt to force utilities into the Hobson’s choice of increasing staffing levels (and costs) to respond to an increased service performance obligation not provided for in its rates or face an increased likelihood that it will be subject to a service quality penalty. Accordingly, the Department should reject the recommendations of the Attorney General and the UWUA and maintain in future SQ Guidelines the current 95 percent benchmark for responding to odor calls.

²⁰ Id.

²¹ UWUA Comments at 7.

3. The Department Should Not Change its Guidelines Regarding the Treatment of Multiple Calls Relating to a Single Gas Leak.

With regard to the Department's question regarding whether multiple calls relating to a single gas leak should be treated as a single odor call response, the gas companies recommended that no change to the Department's Guidelines were either necessary or warranted because the general practice of the gas companies is to treat multiple calls regarding a single gas leak as a single odor call response, to the extent the companies are able to determine that a particular succession of calls are related to a single odor source.²² Moreover, for KeySpan, the number of odor calls that this would apply to is miniscule when compared to the total number of calls received by the Company. Therefore, classifying multiple calls for a single leak as one response would have minimal, if any, effect on its reported performance for the year. No other commenters provided an opinion regarding this question and thus, the Department should accept the recommendation of the gas companies that no change be made to the Department's Guidelines regarding the treatment of multiple odor calls.

C. Role of Staffing Levels

1. Summary of Comments

The Department sought comment on the role of staffing levels in future Guidelines.²³ In seeking comment on this issue, the Department noted that, although G.L. c. 164, § 1E "requires the Department to establish benchmarks for staff and

²² Bay State Comments at 6; Berkshire Comments at 9-10; Fitchburg Comments at 5; KeySpan Comments at 13; New England Gas Comments at 15; NSTAR Comments at 18.

²³ Vote to Open Investigation at 2.

employee levels of LDCs” and further “requires that no company may reduce its staffing levels below what they were on November 1, 1997,” the statute neither defines whether staffing level considerations should apply only to union employees or to all employees nor whether staffing levels should include employees of non-regulated subsidiaries of the LDCs.²⁴ The Department also raised the issue of whether the lapse in time between enactment of the statute and adoption of a performance-based rate plan negates the November 1, 1997 requirement and further noted the statute does not provide for any penalty for the LDCs that do reduce their staffing levels below 1997 levels.²⁵

Several of the utility companies contended that the Department’s current system of monitoring staffing and service-quality levels through: (1) a comprehensive service-quality program to detect and penalize companies for degradations in service; (2) the establishment of a benchmark staffing level as of November 1, 1997 and annual reporting of staffing levels in each year thereafter; and (3) the establishment of a potential formal investigation into the causes and circumstances of a service decline in any case where performance falls below the established guidelines, fulfills the statutory mandate set forth in G.L. c. 164, § 1E (a) and therefore, recommended no changes in future Guidelines regarding staffing levels.²⁶

Fitchburg, KeySpan, New England Gas and NSTAR also addressed the specific statutory issues raised by the Department by noting that it is unreasonable to establish staffing level reductions as the trigger for an SQ investigation because staffing level

²⁴ Id.

²⁵ Id.

²⁶ KeySpan Comments at 14-21; New England Gas Comments at 16-22; NSTAR Comments at 19-through 25.

reductions, per se, do not mean that a company's SQ has deteriorated.²⁷ Rather, these companies contended that the Department has properly addressed staffing levels in its current Guidelines by using staffing level data only in the context of determining whether SQ deterioration in a given category was related to staffing level reductions.²⁸ Accordingly, these companies recommended that the Department need not define staffing level benchmarks nor determine whether they should apply to both union and non-union employees because the Department's current Guidelines recognize that staffing level reductions are not necessarily related to SQ deterioration.²⁹

KeySpan, New England Gas and NSTAR also commented that the Department's current Guidelines appropriately address the role of penalties relating to staffing levels and the significance of a company's November 1, 1997 staffing levels by tying SQ penalties to SQ performance only, and not to the maintenance of a particular staffing level as of a specific date.³⁰ Therefore, because the Department's existing SQ framework appropriately focuses first on the level of service currently provided by utilities, and bases penalties only on deterioration in service, rather on the maintenance of a particular level of staff to provide that service, KeySpan, New England Gas and NSTAR recommended that the Department make no changes to future Guidelines regarding staffing levels.³¹

²⁷ Fitchburg Comments at 6, KeySpan Comments at 19; New England Gas Comments at 20; NSTAR Comments at 23.

²⁸ Fitchburg Comments at 6-7; KeySpan Comments at 19; New England Gas Comments at 20; NSTAR Comments at 23; see also WMECo Comments at 5.

²⁹ KeySpan Comments at 19; New England Gas Comments at 20-21; NSTAR Comments at 24; see also National Grid Comments at 5-7.

³⁰ KeySpan Comments at 20; New England Gas Comments at 21-22; NSTAR Comments at 24-25; see also Berkshire Gas Comments at 13.

³¹ see also AIM Comments at 1 ("unless there is significant documented evidence that supports degradation in customer service, there should be no penalty provision for staff reductions since 1997" and Bay State Comments at 8 ([t]he Department's Guidelines support the requirements of Section 1E(a) and (b)

Berkshire Gas commented that, with regard to the Department’s specific staffing level issues, staffing level considerations should apply: (1) solely to union personnel, based on the language of G.L. c. 164, § 1E and the Department’s August 2000 Interim SQ Order at 15;³² and (2) only to employees of a company’s regulated subsidiaries, consistent with the Department’s ratemaking policies which establish rates based only the portion of a company’s salaries and benefits relating to its regulated operations.³³ Moreover, Berkshire Gas recommended that the starting date of staffing level benchmarks, if any, should begin no earlier than the beginning of a company’s performance-based rate plan.³⁴ WMECo’s comments addressed the Department’s specific staffing level issues by noting that G.L. c. 164 § 1E does not clearly address how staffing levels should be addressed in the context of companies that are part of a holding company, like WMECo.³⁵ Because of the lack of statutory guidance on staffing level issues, WMECo recommended against the inclusion of staffing levels in future Guidelines.³⁶

Of the remaining commenters, only the Attorney General and the UWUA recommended changes in future Department Guidelines to address staffing level issues. The Attorney General narrowly focused his comments on two issues: (1) the significance of the November 1, 1997 provision, by noting that the Department should not “negate” the statutory “requirement” to maintain staffing levels “because of any lapse in time

by providing for Department action at evidence of deterioration in service quality...rather than a change in staffing level).

³² See also National Grid Comments at 6-7.

³³ Berkshire Gas Comments at 11-13.

³⁴ Id.

³⁵ WMECo Comments at 5-6.

³⁶ Id.

between the enactment of the statute and the adoption of a performance-based rate plan;” and (2) penalties, by contending that the Department has the statutory authority to assess penalties against companies that “fail to meet...service quality standards.”³⁷

The UWUA recommended that the Department implement and enforce staffing level benchmarks.³⁸ The UWUA based its recommendation on allegations that staffing level reductions at some gas and electric companies caused service quality deterioration.³⁹ The UWUA also alleged that the Department has “tolerated massive staff reductions” without investigation.⁴⁰ In response to the specific staffing level issues raised by the Department, the UWUA recommended that the Department should: (1) set staffing level benchmarks that include all of a company’s union and non-union employees; and (2) set such benchmarks based on a company’s staffing levels in existence as of November 1, 1997.⁴¹

2. The Department Should Maintain its Current Guidelines Regarding Staffing Levels.

Based on the comprehensive rationale articulated by KeySpan and the other utility companies in their initial comments, the Department should make no changes in any future SQ Guidelines regarding the issue of staffing levels. In particular, the Department should not make the maintenance of specific staffing levels subject to penalty. Neither the Attorney General nor the UWUA have articulated a compelling rationale for penalizing companies for having fewer employees in a given year than they had historically.

³⁷ Attorney General Comments at 4.

³⁸ UWUA Comments at 8-16

³⁹ Id. at 9-11.

⁴⁰ Id. at 12.

⁴¹ Id. at 14-16.

The majority of the commenters recognized that there is no basis for concluding that merely because a company may have fewer employees in a given year than it had historically, its SQ must have degraded, and therefore justify a possible penalty. This is particularly true in the context of the Attorney General's and UWUA's recommendations to establish staffing level benchmarks based on a company's November 1, 1997 staffing levels. In the absence of evidence that a company's SQ has degraded from historic levels, it is irrelevant whether a company had a certain staffing level in November 1, 1997, compared to November 1 of the year in which a company's SQ performance is being measured. Indeed, neither the Attorney General nor the UWUA offered a means to establish penalties relating to staffing levels (e.g., does one less employee in a given year compared to November 1, 1997 staffing levels justify the imposition of a penalty?). Accordingly, the Department should continue to consider staffing level data in the context of assessing SQ only where evidence of actual SQ degradation is present.

D. Standardization of SQ Performance Benchmarks

1. Summary of Comments

The Department sought comment on whether the historical performance of each gas and electric company on SQ performance measures remains the best method for establishing performance benchmarks.⁴² The utility companies generally agreed with the findings of the report entitled Summary of Findings Related To Service Quality Benchmarking Efforts, Navigant Consulting, Inc. (December 19, 2002), (the "Report")

⁴² Vote to Open Investigation, at 2.

that answered the Department’s question in the affirmative.⁴³ The companies based their support for the continuation of company-specific historical benchmarks on the Report’s comprehensive evaluation of the potential for using national, regional or statewide data to establish uniform or comparative performance benchmarks across the utilities serving customers in the Commonwealth. The Report concluded that inherent differences among utilities in terms of data-collection methods, data quality, geography, distribution system design and configuration and weather impacts make it virtually impossible to establish standardized performance benchmarks that would have validity in terms of measuring (and penalizing) the performance of a specific Massachusetts-based utility.⁴⁴ The only SQ measure noted by the gas companies that lends itself to standardization is Odor Call Response, which the LDCs currently measure via a standardized 95 percent benchmark.⁴⁵

The Attorney General suggested that some SQ categories such as call center answering, bill adjustments, customer satisfaction surveys and safety standards “may lend themselves to statewide or national benchmarks,” while others, such as SAIDI and SAIFI, may not.⁴⁶ AIM suggested that it “may be appropriate” for the Department to “explore a broader-than-company benchmark” in some (unspecified) areas of SQ.⁴⁷

Constellation and the UWUA recommended that the Department establish standardized benchmarks for some measures. Constellation recommended that the Department establish standardized benchmarks for “market access services” such as:

⁴³ Bay State Comments at 8-9; Berkshire Comments at 13; Fitchburg Comments at 8-9; KeySpan Comments at 21-24; National Grid Comments at 7; New England Gas Comments at 23-25; NSTAR Comments at 26-28; WMECO Comments at 7-8.

⁴⁴ see e.g., NSTAR Comments at 27, citing Report at 13, 16-23

⁴⁵ see, e.g., Bay State Comments at 5-6; Berkshire Comments at 8-9; Fitchburg Comments at 4-5; KeySpan Comments at 11; New England Gas Comments at 13; NSTAR Comments at 16

⁴⁶ Attorney General Comments at 5.

⁴⁷ AIM Comments at 1.

(1) the provision of interval data; (2) enrollment; (3) billing-related services; and (4) distribution company systems and personnel relating to the provision of services to competitive suppliers.⁴⁸ The UWUA recommended that the Department establish standardized benchmarks for consumer division cases and keeping service appointments, as well as increase the standardized benchmark for Odor Call Response from 95 to 98 percent.⁴⁹

2. The Department Should Maintain its Current Guidelines Regarding the Establishment of Company-Specific Benchmarks.

The Department should reject the recommendations of AIM, the Attorney General and the UWUA which, in some form, contended that the Department should establish standardized benchmarks for additional SQ measures. The Attorney General and the UWUA recommended specific categories for standardized benchmarks, the majority of which are inappropriate because of the varying technologies, sizes and service territory characteristics of the Massachusetts LDCs.

For example, the Attorney General's recommendation to establish standardized benchmarks for Call Answering ignores the fact that each LDC has its own level of technology that allows it to answer calls in a specific timeframe. Moreover, the Attorney General's recommendation to establish standardized benchmarks for Bill Adjustments fails to account for the fact that smaller LDCs may have very few, but significant, bill adjustments in a given year. Similarly, although the UWUA recommends that Consumer Division Cases be subject to a standardized benchmark, the size of a company and the demographic makeup of the service territory will affect the number of Consumer Division Cases tallied by the Department. In each of these categories, given the effect of

⁴⁸ Constellation Comments at 2-7, 10

company size and service area demographics on SQ performance, companies should be allowed to measure their performance against their own history rather than against a benchmark based on the performance of other companies in their region or nationally.

The Department should also reject Constellation’s recommendations to establish standardized benchmarks for “market access” services. The Department has no compelling public policy basis for subjecting regulated companies to penalties for their performance in dealing with unregulated competitive suppliers. The relationship between competitive suppliers and natural gas local distribution companies is clearly set forth in each company’s Distribution Service Terms and Conditions. These Distribution Terms and Conditions were developed primarily through the Natural Gas Unbundling Collaborative after much debate and with the input of many suppliers. The Department’s SQ Guidelines are properly founded on ensuring that a gas or electric company’s customers are protected from SQ degradation, as opposed to experienced competitive suppliers that have the means of protecting their own interests. Accordingly, there is no need for the Department to consider whether standardized benchmarks should be implemented for “market access” services.

E. SQ Incentives

1. Summary of Comments

The Department sought comments as to whether gas and electric companies should be allowed to collect incentives for SQ performance.⁵⁰ With the exception of Berkshire Gas, the utility companies generally agreed that the Department should

⁴⁹ UWUA Comments at 16-17.

consider the adoption of a symmetrical system of financial penalties and rewards as part of its SQ Guidelines because: (1) the possibility of collecting a financial reward for service-quality improvements will provide a strong incentive to utilities to move forward with service-related investments that benefit customers; and (2) the potential for a financial reward will offset the impact of penalties that have the potential to result when the utility is held to an ever-increasing performance benchmark during the term of a SQ plan.⁵¹ Moreover, the Attorney General and Constellation expressed their respective support for incentives, although the Attorney General prefaced his support on further review and study by the Department.⁵² Berkshire Gas did not comment on whether incentives should be available for electric companies and other gas companies. However, it requested that the Department not include incentives for SQ performance for Berkshire Gas, at least for the duration of its approved Price Cap Mechanism plan.⁵³

2. The Department Should Make Available Incentives for Superior SQ Performance.

Of those entities that provided the Department with comments on this issue, each entity, except for Berkshire Gas, expressed at least qualified support for the adoption by the Department of incentives for superior SQ performance. Accordingly, to the extent that the Department continues to subject companies to penalties for SQ degradation, the Department should adopt a symmetrical system of incentives: (1) to reward companies for improving SQ performance through investments or other means; and (2) to provide companies with

⁵⁰ Vote to Open Investigation at 3

⁵¹ Fitchburg Comments at 9; KeySpan Comments at 24-25; New England Gas Comments at 25-26; NSTAR Comments at 28-29; see also Bay State Comments at 9-10; National Grid Comments at 11-12 and WMECO Comments at 8.

⁵² Attorney General Comments at 5; Constellation Comments at 11.

PBR plans a means of offsetting penalties in categories where their performance exceeds their level of performance at the beginning of their PBR plan, but which reflects a degradation of performance over the most recently established benchmarks for that category.

F. Customer Service Guarantees

1. Summary of Comments

The Department sought comment regarding whether future Guidelines should require: (a) payment to customers whether or not the customer requests the credit; and (b) classification as a missed service appointment if the LDC contacts the customer within four hours of the missed appointment and re-schedules the appointment.⁵⁴

a. Payment of Customer Service Guarantees

Most of the utility companies either supported, or did not object to, a provision in future Guidelines requiring companies to pay customer service guarantees automatically.⁵⁵ Fitchburg and NSTAR expressed neither support nor opposition to this proposal, but noted that they currently do not issue customer service guarantee payments automatically, and would have to implement a burdensome and costly process in order to do so.⁵⁶ National Grid and WMECo expressed support for automatic payments in some instances, but opposed an automatic payment if the company fails to notify a customer of a scheduled non-emergency outage.⁵⁷ Of the remaining commenters on this issue, each

⁵³ Berkshire Gas Comments at 15-16.

⁵⁴ Vote to Open Investigation at 3.

⁵⁵ Bay State Comments at 10; Berkshire Comments at 17; KeySpan Comments at 28; National Grid Comments at 12; New England Gas Comments at 29; NSTAR Comments at 32-33.

⁵⁶ Fitchburg Comments at 11, NSTAR comments at 32-33.

⁵⁷ National Grid comments at 13,; WMECo Comments at 9.

supported the Department's adoption of a policy requiring companies to issue customer guarantee payments automatically.⁵⁸

b. Classification of Service Appointments Rescheduled Within 4 Hours

The utility companies opposed classifying service appointments that are rescheduled within four hours as “missed.”⁵⁹ The UWUA recommended that companies should be able to avoid a customer guarantee payment by calling a customer in advance of the appointment and reschedules the appointment at a time convenient to the customer.⁶⁰ AIM noted only that it did not support the payment of customers if the company reschedules a service appointment within four hours.⁶¹ The Attorney General recommended that “if the LDC is more than four hours late for a scheduled service appointment, it should automatically pay the customer, regardless of whether the LDC contacts the customer after the appointment is missed and reschedules.”⁶² The Attorney General did not comment on whether appointments that are re-scheduled within four hours should be classified as missed.

2. The Department Should Generally Maintain its Current Guidelines Regarding Service Appointments.

Based on the Initial Comments, the Department should generally maintain its current Guidelines regarding Service Appointments Kept, as they relate to: (1) the

⁵⁸ AIM Comments at 2; Attorney General Comments at 6; UWUA Comments at 18.

⁵⁹ Bay State Comments at 10-11; Berkshire Comments at 17-18; Fitchburg Comments at 11-12; KeySpan Comments at 29; National Grid Comments at 13; New England Gas Comments at 30; NSTAR Comments at 34; WMECo Comments at 9.

⁶⁰ UWUA Comments at 18.

⁶¹ AIM Comments at 2

⁶² Attorney General Comments at 6.

payment of customer guarantees; and (2) the treatment of service appointments that are rescheduled within 4 hours.

G. Property Damage

1. Summary of Comments

The Department requested comments on whether its reporting requirement regarding losses related to damage of company-owned property should be made a penalty measure in future Guidelines.⁶³ None of the commenters supported making damage to company-owned property a penalty-measure, with many citing the lack of a nexus between SQ and damage to company property.⁶⁴ The Attorney General recommended that the Department change the measure to require companies to report on damage to customer-owned or third-party-owned property, suggesting that these measures “better reflect SQ” and are of greater concern to customers.⁶⁵

2. The Department Should Not Make Damage to Company Property a Penalty Measure.

Given the participants’ arguments regarding the lack of a nexus between damage to company property and SQ performance and the lack of support for making damage to company property a penalty measure in future Guidelines, the Department should not change its Guidelines to make damage to company property a penalty measure. Moreover, the Department should reject the Attorney General’s recommendation to

⁶³ Vote to Open Investigation at 3.

⁶⁴ See, AIM Comments at 2; Bay State Comments at 12; Berkshire Comments at 18; Fitchburg Comments at 12; KeySpan Comments at 30; National Grid Comments at 14; New England Gas Comments at 32-34; NSTAR Comments at 36-39; WMECO Comments at 9

⁶⁵ Attorney General at 6.

require LDCs to report on damage to customer or third-party property. The mere allegation of damage may or may not be substantiated and therefore should not be a reportable event in the context of the Department's SQ Guidelines. Moreover, damage to third property may or may not be the fault of the company. Thus, the interpretation of data reported by the utility would be subjective and not capable of accurate measurement for purposes of establishing a performance benchmark. Accordingly, the Department's current reporting requirements regarding damage to company property should not be altered in future SQ Guidelines.

H. Line Losses

1. Summary of Comments

The Department sought comment regarding whether line loss data should be made a reporting requirement in the future Guidelines.⁶⁶ None of the commenters opposed maintaining line loss or unaccounted-for gas data as reporting requirements in future Guidelines.⁶⁷

Constellation recommended that the Department make line losses “part of the service quality guidelines.”⁶⁸ Conversely, WMECo opposed making line losses “an SQ measure.”⁶⁹ AIM recommended that the Department require line loss data collection to be standardized.⁷⁰ The Attorney General recommended that the Department expand the line loss reporting requirement by requiring companies to incorporate a “self-assessment

⁶⁶ Vote to Open Investigation at 3

⁶⁷ Bay State Comments at 13; Fitchburg Comments at 13; KeySpan Comments at 32; National Grid Comments at 15; New England Gas Comments at 35; NSTAR Comments at 40

⁶⁸ Constellation Comments at 11.

⁶⁹ WMECo at 10.

⁷⁰ AIM Comments at 2

section” wherein each company would describe the root causes for performance changes from prior years.⁷¹ Lastly, the UWUA recommended that, although line loss and unaccounted-for gas data should not be made a penalty measure, the Department should investigate reports of unusually high line losses or unaccounted-for gas.⁷²

2. The Department Should Maintain its Current Guidelines Regarding Line Loss and Unaccounted-For Gas Data.

KeySpan does not oppose continuing to report unaccounted-for gas data to the Department. However, the Department’s question was not specific regarding whether the Department is considering making unaccounted-for gas data a penalty measure. KeySpan would oppose that change in future Guidelines because, as recognized by the Department, year to year changes in unaccounted for gas do not necessarily reflect a degradation of service.⁷³ Moreover, KeySpan currently calculates the unaccounted-for gas in its Annual Return to the Department by comparing total sales and total sendout data for a twelve month period ending each December. This twelve-month period actually includes both unaccounted-for gas and unbilled gas. Therefore the Company cannot identify whether a change in percentage from one year to the next was a due to change in the unaccounted-for gas, a change in unbilled gas, or a combination of the two. To obtain a true unaccounted-for gas percentage, the Company would need to compare total sales and total sendout for a twelve-month period ending August, since in that time period, the unbilled gas would equal zero. The Company, however does not object to the

⁷¹ Attorney General Comments at 6.

⁷² UWUA Comments at 20.

⁷³ D.T.E. 99-84, at 18

recommendation of the Attorney General that it should include information in the annual reports describing the reasons for any year-to-year changes in their unaccounted-for data.

I. Additional Recommendations⁷⁴

1. Attorney General's Additional Recommendations

The Attorney General's Comments included recommendations prepared by Energy Advisors, LLC.⁷⁵ Based on this document, the Attorney General recommends that the Department:

- (1) make its penalty provisions more effective by:
 - requiring improved performance;
 - eliminating the maximum penalty per-measure or raising the overall two-percent penalty cap;
 - limiting penalty exposure to the most critical performance areas;
 - adjusting penalty formulas to accelerate the rate at which penalties accrue; and
 - reducing or eliminating the availability of offsets for better-than benchmark performance in particular areas;
- (2) improve SQ measures by revising the allocation of penalty exposure and determining if the current list of measures represents those areas of performance most critical to customers;
- (3) enhance Department review of company annual SQ reports;
- (4) require companies to issue SQ annual "report cards" to customers informing them of the company's SQ over the prior year; and
- (5) ensure company data quality and integrity by using precise definitions and protocols in the Department's Guidelines.⁷⁶

⁷⁴ The Company addressed Constellation's "additional recommendations" in the context of addressing Constellation's recommendations on standardized benchmarks. The Company is not addressing the additional recommendations of the IBEW or the UWUA in these reply comments because they do not apply to gas companies.

⁷⁵ Attorney General Comments, Attachment 1

⁷⁶ Id. at 1-2

The Department should reject the Attorney General's recommendations aimed at making the Department's penalty provisions "more effective." First and foremost, although the Department may determine that additional incentives to improve SQ performance should be available in future SQ Guidelines, the Department should not mandate that SQ performance improve on a year-to-year basis. The Department's SQ Guidelines properly focus on ensuring that SQ not degrade from a company's historical SQ performance, particularly for those companies that are subject to performance-based rate ("PBR") plans. Indeed, PBR plans, such as the plan under which Boston Gas operates⁷⁷, generally include a productivity offset in the formula used to determine its annual rate increases. Therefore, to the extent that potential productivity gains are already reflected in rates and passed on to customers, it would be wrong to further penalize a company for failing to improve on its SQ Guideline benchmarks. Such a scheme would constitute an inappropriate double hit to the to the Company's earnings that was not contemplated at the time the PBR plan was developed. Moreover, for those companies subject to rate freezes, such as Essex Gas and Colonial Gas, those companies would have no opportunity to recover the increased costs necessary to achieve the improved performance and avoid potential penalties. Finally, even the Attorney General acknowledges that "there is a limit on how far the benchmarks can be strengthened because, at some point, there will be diminishing returns from additional investment in SQ."⁷⁸ Accordingly, future SQ Guidelines should continue to focus on ensuring that SQ performance does not degrade from year-to-year, rather than requiring improved performance on an annual basis.

⁷⁷ The Boston Gas PBR formula includes a .41% productivity offset.

⁷⁸ Attorney General Comments at 3

With regard to the Attorney General's recommendations specific to the Department's penalty formula, the Department lacks the authority to increase the overall penalty cap above the statutorily-imposed level of two percent of a company's distribution and transmission revenues for the previous calendar year.⁷⁹ Therefore, the Department must reject this recommendation.

However, the Attorney General also recommends that the Department alter its penalty formula to allow higher penalties for individual categories, adjusting the penalty formula to increase the rate at which penalties accrue and/or revisiting the categories for which penalties may be imposed. The Department's formula for calculating penalties and allocating them among various SQ categories was determined after full deliberation over three years, based on the input of interested parties, including the Attorney General, and on the best judgment of the Department. The Department could determine that its penalty formula should be altered in the general manner recommended by the Attorney General, i.e., the current formula and allocations are not based on comprehensive quantitative factors. However, the LDCs have dedicated significant resources to implement the Department's SQ Guidelines as established in 2001 which have produced positive results over the past three years. This effort should be allowed to continue to bear fruit over a long-term horizon and should not be subject to ever-changing penalty policies.⁸⁰

With regard to the Attorney General's non-penalty-related recommendations, KeySpan does not oppose either the distribution of SQ "report cards" on an annual basis, or encouraging the development of precise definitions to ensure that companies have

⁷⁹ See, G.L. c. 164, § 1E(c).

clear guidelines on which to measure SQ. However, the company does not believe that the Department needs to “strengthen” its review of companies’ annual service quality reports. The Department has the opportunity and authority to investigate the annual SQ reports of any company as it deems necessary. However, each report of each company does not require a comprehensive Department investigation. The Department should continue to allocate its resources in a given year to focus on those SQ reports that indicate significant SQ degradation.

Respectfully submitted,
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⁸⁰ The Company has addressed previously the Attorney General’s recommendations regarding limiting the availability of offsets.